

Serial No. 10/509,835

Docket No. 7393/84118

Page 5

REMARKS

Please enter this response, and grant the requested extension of time.

The new claims find basis in the paragraph bridging pages 3 and 4 of the original specification, as well as FIG. 1.

Applicants courteously solicit favorable reconsideration and allowance with respect to all claims.

Applicants submit that claims 1-4 define novel and unobvious inventions over the combination of U.S. Patent No. 4,840,797 (Boursier) in view of U.S. Patent No. 4,849,023 (Devos).

Applicants submit that claims 1-4 would not have been obvious to one of ordinary skill in the art in view of Boursier, even if it were combined with Devos. The Boursier reference does not describe, nor would it be taught the dry matter content of the syrup being of from 68-72%.

The Boursier reference would not have taught the person of ordinary skill in the art that a dry matter content of syrup comprises from 0.7-1.5 wt% of DE₄₊.

In fact, the Boursier would have taught a range of at most from 55-65 wt% (column 2, line 40) and that would not have suggested the more narrow yet higher range of 68-72%.

The secondary Devos reference would not have suggested changing the approach dictated according to the Boursier reference.

Serial No. 10/509,835

Docket No. 7393/84118

Page 6

The present specification includes the evidentiary basis from which to reach the foregoing conclusions. The evidentiary basis would effectively rebut any prima facie case even if such a case were established, which case has not been established.

The Boursier reference is the U.S. counterpart to EPO patent publication EP 0 201 412.

Applicants' specification discloses to those skilled in the art that EP 0 201 412 describes:

a confectionary or pharmaceutical product provided with a hard, sugarless coating obtained by hard coating using a maltol syrup having a dry matter content of from 50-75% by weight, the coating being essentially crystalline and comprising at least 90% by weight of maltol (specification, page 1, paragraph 4).

Applicants' specification further discloses for those skilled in the art that:

EP 0 201 412 describes a maltol syrup which is consisting of 97.1% by weight of maltol, 1.1% by weight of sorbitol and 1.8% by weight of maltotriitol. Said syrup is devoid of any DP₄₊ fraction, and it is clearly demonstrated that it is not possible to obtain a regular surface when applying the maltol syrup at a dry substance content higher than 65%. In cases where higher drier substance is used, the crystallization is irregular and defects on the surface appear (specification, page 3, penultimate paragraph).

Indeed, Applicants' specification, with the oath and declaration, includes the evidentiary summation:

Surprisingly, the current invention demonstrates that maltitol syrups containing from 0.7-1.5% DP_{sub.4+} on dry matter content, and from 95-97% maltitol on dry matter content, are suitable to use syrups at a dry substance higher than 65%, i.e. at dry substance of 68-72% and yet regular hard coatings are obtained (see FIG. 1). Preferably,

Serial No. 10/509,835

Docket No. 7393/84118

Page 7

maltitol syrups having a dry matter content from 70-72%, result in a hard coating with a homogeneous surface.

The evidentiary showing in the specification consistent with the above-stated results is amply illustrated in FIG. 1. FIG. 1 is a photograph with magnification of 6 x 10. The photograph shows that the hard coating prepared with the liquid maltol syrup of 96% maltol and 0.7-1.5% by weight of DP₄₊ based on dry matter yields a smooth regular surface.

Therefore, even if, for the sake of argument only, one were to have engaged in hindsight modification of the Boursier reference according to the Office Action, the result would, at best, be an irregular crystallization and defects on the surface of the sugar-coated comestible that would be a disadvantageous and undesired and unacceptable result.

Applicants have achieved success, whereas the approach postulated according to the Office Action results in failure.

Applicants, therefore, earnestly but courteously submit the obviousness rejection should be reconsidered and withdrawn.

For reasons similar to those stated above, Applicants submit their claims 7 and 8 define unobvious advantages over the Boursier reference, even if taken in view of the Devos reference. Therefore, Applicants earnestly but courteously request the Examiner to withdraw the rejection set forth in paragraph 17 on page 5 of the Office Action.

Applicants courteously but earnestly solicit that claims 5 and 6 also define unobvious inventions over the Corriveau reference taken in

JAN 31 2008

Serial No. 10/509,835

Docket No. 7393/84118

Page 8

view of the Devos reference. Applicants submit that there would have been no reasonable expectation of success to have undertaken the retrospective analysis detailed in the Office Action. Even if the retrospective analysis were appropriate, which it is not, according to the verb tense utilized in 35 U.S.C. §103(a), the specification herein details that the result postulated in the Office Action would not have been successful, or at least would not have been expected to be successful.

Accordingly, reconsideration and withdrawal of this rejection is courteously but earnestly solicited.

Applicants hereby request a three-month extension of time in which to file this response. The Commissioner is hereby authorized to charge the one-month extension fee of \$1050 to Deposit Account No. 06-1135 regarding our Order No. 7393/84118. If in error, the Commissioner is hereby authorized to charge any required fee not otherwise paid, including application processing, extension, and extra claims fees, to said Deposit Account.

Respectfully submitted,

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